

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

ENRIQUE DIAZ	§	
v.	§	CIVIL ACTION NO. 9:08cv86
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Petitioner Enrique Diaz, proceeding *pro se*, filed this application for the writ of habeas corpus complaining of the legality of prison disciplinary action taken against him. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Diaz was convicted of the disciplinary offense of engaging in a fight without a weapon. The charges against him stated that on December 18, 2007, Officer Gundacker walked by Diaz's cell for count and saw Diaz's cellmate, Brian Allen, in the rear of the cell with blood and cuts on his face. Gundacker ordered Allen to stand where he could see him and called his supervisor, Sgt. White, on the radio. Diaz was standing at the front of the cell, and made the statement that "it ain't what you think it is." Diaz had bruising on his hand and blood on his pant leg, but denied assaulting Allen. He was found guilty of fighting without a weapon and given 30 days of cell restriction, 15 days of solitary confinement, the loss of 240 days of good time, and a reduction in classification status.

In his habeas petition, Diaz said that he was denied an impartial hearing officer, he is actually innocent, there was no evidence to support the conviction, there was an inadequate statement of reasons for the finding of guilt, he received ineffective assistance from his counsel substitute, and

prison rules were violated in that the hearing was held untimely and he was kept in pre-hearing detention for more than 72 hours prior to the hearing.

The Respondent was ordered to answer the petition and did so. The Respondent also furnished copies of the state records, including a tape of the disciplinary proceeding. Diaz did not file a response to the answer.

After reviewing the pleadings and records, the Magistrate Judge issued a Report on December 2, 2008, recommending that the petition be dismissed and that Diaz be denied a certificate of appealability *sua sponte*. Diaz has filed objections to this Report.

In his objections, Diaz simply re-states his grounds for relief, which he sets out as actual innocence, denial of an impartial hearing officer, the conviction was based on no evidence, counsel was “required and ineffective,” and there was an inadequate statement of reasons for the finding of guilt. He offers no argument regarding any of these points, nor does he challenge or controvert the Magistrate Judge’s proposed findings of fact or conclusions of law.

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the original petition, the answer of the Respondent, the state court records, the Report of the Magistrate Judge, the Petitioner’s objections thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the objections of the Petitioner are without merit. It is accordingly

ORDERED that the Petitioner’s objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Enrique Diaz is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** this **10** day of **February, 2009**.

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

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Ron Clark, United States District Judge